



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 26, 1998

Ms. Sharon Alexander
Staff Attorney
Texas Department of Health
1100 West 49th Street
Austin, Texas 78756-3199

OR98-1546

Dear Ms. Alexander:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 116384.

The Texas Department of Health (the "department") received two requests from recipients of Medicaid benefits for documents reflecting the amount or type of benefits each requestor received. You explain that the department "has in the past recognized an individual's special right of access to information about himself, since the laws addressing the confidentiality of this information were clearly intended to protect that individual's privacy." You now contend, however, that the department is prohibited from releasing the Medicaid information to those individuals to whom the information relates by state and federal laws that make the information confidential and that the information therefore must be withheld from those individuals pursuant to section 552.101 of the Government Code. We have previously addressed the viability of your contention. Open Records Letter Nos. 98-1319 (1998), 98-0802 (1998).

Section 552.101 of the Government Code excepts from required public disclosure information considered confidential by statutory law. Section 12.003(a) of the Human Resources Code provides as follows:

Except for purposes directly connected with the administration of the department's assistance programs, it is an offense for a person to solicit, disclose, receive, or make use of, or to authorize, knowingly permit, participate in, or acquiesce in the use of the names of, or any information concerning, persons applying for or receiving [Medicaid] assistance if the information is directly or indirectly derived from the records, papers, files, or

communications of the [Texas Department of Human Services] or acquired by employees of the department in the performance of their official duties..

Except for purposes directly connected with the administration of the assistance programs administered by the Texas Department of Human Services, this statute forbids the public disclosure of "any information" concerning assistance program clients of the department, including Medicaid clients. *See* Open Records Decision No. 584 (1991). In Open Records Decision No. 584 (1991), this office addressed the question of whether client Medicaid records could be released to the public if the records were "de-identified" to protect the clients' privacy interests. That decision concluded that "[b]oth state and federal law prohibit the release of information about welfare applicants and recipients *to the general public* by limiting disclosure to purposes directly connected to the administration of the welfare programs." (Emphasis added.) The decision's conclusion focused on the fact that "from the amount of detailed information requested, one could ascertain the identities" of the clients from the de-identified documents. *Id.* at 3. Open Records Decision No. 584 (1991) therefore illustrates that the purpose of these confidentiality provisions was to protect the Medicaid clients' privacy interests.

Section 552.023 of the Government Code provides a person, or the authorized representative of a person, a special right of access to records held by a governmental body that contain information relating to the person that is protected from public disclosure by laws intended to protect that person's privacy interests. However, where a law is intended to protect other interests in addition to the privacy interests of the person to whom the records relate, those records may not be released to the person pursuant to section 552.023. *See, e.g.,* Open Records Decision No. 603 (1992) (investigation of home health services agency), 591 (1991) (medical peer review records), 587 (1991) (child abuse investigation).

You have not argued, nor is it apparent to this office, that section 12.003 of the Human Resource Code is intended to protect any interest other than the privacy interests of Medicaid clients.¹ Absent a demonstration that such an additional interest exists, we conclude that recipients of Medicaid benefits have a special right of access to their respective records pursuant to section 552.023 of the Government Code and that the department therefore must immediately release the requested information.²

¹You also suggest that the requested records must be withheld from the Medicaid recipients pursuant to section 32.002 of the Human Resource Code. Section 32.002 merely renders "inoperative" any provision of chapter 32 of the Human Resource Code that conflicts with federal law "to the extent that federal matching money is not available to the state." This section does not purport to affect any other provision of state law.

²We also note that the recipients may have a common-law right of access to this information. *Cf. Hutchins v. Texas Rehab. Comm'n*, 544 S.W.2d 802 (Tex. Civ. App.--Austin 1976, no writ). Additionally, some of the requestors may have a constitutional due process right of access to their respective records where the information is to be used as the basis for a determination of his or her entitlement to a benefit. *See* Attorney General Opinion H-249 (1974).

We note that a governmental body subject to the Open Records Act need only seek an attorney general decision when it seeks to withhold information. *See* Gov't Code § 552.301. We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "June B. Harden". The signature is fluid and cursive, with the first name "June" being more prominent.

June B. Harden
Assistant Attorney General
Open Records Division

JBH/ch

Ref.: ID# 116384

Enclosures: Submitted documents

cc: Mrs. Ernestina Garcia
2805 Margarita Street
Brownsville, Texas 78520
(w/o enclosures)